

Acer Computer BV (Benelux)  
Europalaan 89  
5232 BC 's-Hertogenbosch  
Nederland

Geachte

Naar aanleiding van mijn verschillende mails met Jan Douwe Merkus (csd\_benelux@acer-euro.com) stuur ik u deze brief.

In mijn eerste mail leg ik uit dat ik een Acer computer gekocht heb. Bij het opstarten van de computer krijgt men een EULA (End User License Agreement) te zien van Microsoft Windows XP Home.

In deze EULA staat het volgende:

"By installing, copying, downloading, accessing or otherwise using the SOFTWARE, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, you may not use or copy the SOFTWARE, and you should promptly contact Manufacturer for instructions on return of the unused product(s) in accordance with Manufacturer's return policies"

Bij deze heb ik bij het ophalen van mijn computer in aanwezigheid van de verkoper alle software van de computer verwijderd. (certificaat zie Bijlage 1)

Dan heb ik, zoals aangeduid in de EULA, Acer gecontacteerd om verdere instructies te verkrijgen voor het terugbrengen van de software.

Mijn eerst telefonisch contact was 31 Augustus 2004 met de Helpdesk. Na een tweede telefoon, 1 September 2004, heb ik het volgende emailadres gekregen: csd\_benelux@acer-euro.com

Dezelfde dag heb ik mijn mail gestuurd (zie Bijlage 2).

Twee dagen later kreeg ik een onduidelijk antwoord (zie Bijlage 3). Hierop heb ik de 7e september een duidelijker antwoord gevraagd. Ik heb tevens aangehaald dat wat Jan Douwe Merkus uitlegde een voorbeeld was van koppelverkoop, wat zowel Europees als Belgisch wettelijk verboden is.

Dezelfde dag kreeg ik een mail die voor de tweede maal geen antwoord was op mijn vraag.

Voor de derde maal, en nu per aangetekende brief, stel ik u nu in gebreke, mij in een termijn van maximum 30 dagen de waarde van de niet gebruikte software terug te betalen en mij zo nodig de instructies te geven om u de betreffende software terug te bezorgen.

Ik hoop hierbij snel tot een minnelijke schikking te kunnen komen en zodoende verdere stappen naar een juridische afhandeling te mogen vermijden.

Met vriendelijke groeten

Christophe Vandeplass

Rue Fond Thirion 61  
B-1410 WATERLOO  
Belgium

## **Bijlage 1: Microsoft Windows Removal Certificate**

## Bijlage 2: Eerste mail naar Acer

**From:** Christophe Vandeplass <christophe@vandeplass.com>  
**To:** [csd\\_benelux@acer-euro.com](mailto:csd_benelux@acer-euro.com)  
**Subject:** Acer laptop  
**Date:** Wed, 01 Sep 2004 17:31:43 +0200  
**Mailer:** Ximian Evolution 1.5.7



Dear sir,

I just phoned Acer Helpdesk about a question I have, they said you should be able to help me further.

I recently bought the Acer Aspire 2012 WLMi.

At the first boot the computer normally asks to install Microsoft Windows XP Home, and at the first screen it shows the EULA (End User Licence Agreement). In the past I had to read this EULA many times for other people, but now it is me who had to accept it.

And I do not accept it.

Let me quote a small part of the agreement:

"By installing, copying, downloading, accessing or otherwise using the SOFTWARE, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, you may not use or copy the SOFTWARE, and you should promptly contact Manufacturer for instructions on return of the unused product(s) in accordance with Manufacturer's return policies"

To confirm the first part, I removed the SOFTWARE immediately at the computer store. They signed me a certificate to prove it.

I am now sending you this email to ask you "for instructions on return of the unused product(s)".

Sincerely Yours

Christophe Vandeplass

## Bijlage 3: Antwoord van Acer

**From:** CSD\_Benelux <CSD\_Benelux@acer-euro.com>  
**To:** Christophe Vandeplas <christophe@vandeplas.com>  
**Subject:** Re: Acer laptop  
**Date:** Fri, 3 Sep 2004 17:15:34 +0200  
**Mailer:** Lotus Notes Release 5.0.11 July 24, 2002

Dear Mister Vandeplas,

If you do not accept the EULA, then XP does not install. But since you bought this notebook, you agreed to the terms of this product. You bought it, so you agreed with those terms. One of those terms is that your notebook is being sold with Windows O.S. If you want to install other O.S., that is your choice, but we do not give support on other O.S. then those delivered with the notebook. Futher, if you call us in the future, with problems regarding hard or software, most of the times me and my colleague's will ask you to preform a recovery of your system to check if this is a hard or software problem. If you do not recover the system, then there are 2 options:

Or you do not get support by us,  
Or the system is being recovered in one of our repair centers. If the problem then is solved, this is a problem with has been cause by the O.S. you use, and therefore no support.

What you can do, is bring back the notebook back to the reseller, and ask your money back, or accept the fact that you can install other O.S. but do not get support for that.

The software cannot be returned to us, because it is a part of the product that you bought.

With kind regards,

Jan Douwe Merkus  
Acer Helpdesk

## Bijlage 4: Tweede mail naar Acer

**From:** Christophe Vandeplass <christophe@vandeplass.com>  
**To:** CSD\_Benelux <CSD\_Benelux@acer-euro.com>  
**Subject:** Re: Acer laptop  
**Date:** Tue, 07 Sep 2004 03:24:42 +0200  
**Mailer:** Ximian Evolution 1.5.7



Dear Sir,

Thank you for your reply to my message regarding the return of unused Microsoft software.

I was very surprised by the following quote: " since you bought this notebook, you agreed to the terms of this product." I could find nowhere in the included documents, any agreement on the automatical acceptance of Microsoft Windows. If there should have been one in the box that was accidentally not included, please send me a copy of this agreement by post (see address below).

The only EULA included, was for Microsoft Windows XP Home. I have fully read and refused this EULA, which only covers the SOFTWARE. As I mentioned in the previous email, it even mentions the possibility to refuse and return the unused software.

"If you do not agree to the terms of this EULA, you may not use or copy the SOFTWARE, and you should promptly contact Manufacturer for instructions on return of the unused product(s) in accordance with Manufacturer's return policies"  
(quoted from the EULA)

I am suprised to read in your email that the Operating System cannot be separated from the computer. Such compulsory conditional sales are an infringement of both the Belgian and European law.

I am therefore asking you to send me instructions on the procedure for return of the unused sotware or to provide me the contact information of the person in charge.

I thank you for your collaboration and hope we'll find a solution soon,

Sincerely yours

Christophe Vandeplass  
My address:  
Christophe Vandeplass  
Rue Fond Thirion 61  
B-1410 Waterloo  
Belgium

## Bijlage 5: Antwoord van Acer

**From:** CSD\_Benelux <CSD\_Benelux@acer-euro.com>  
**To:** Christophe Vandeplas <christophe@vandeplas.com>  
**Subject:** Re: Acer laptop  
**Date:** Tue, 7 Sep 2004 19:06:18 +0200  
**Mailer:** Lotus Notes Release 5.0.11 July 24, 2002

Dear mister Vandeplas,

So this means that you have bought the notebook, but did not know that it was been shipped with Windows XP? You had no information about our notebooks being preinstalled with Windows XP. You did not read any of the specs? In that case I can understand that you want your money back. But if you bought the notebook, with XP as a specification (like Wlan, or Bluetooth, Widescreen etc) this means you bought it, and agreed that XP was also delivered with your notebook. If you do not want to make use of XP, then the only solution is to bring back the notebook and ask your money back, because we do not refund XP licences.

With kind regards,

Jan Douwe Merkus  
Acer Helpdesk